

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES H. MAXWELL,

Plaintiff,

v.

REAL CHANGE,

Defendant.

CASE NO. C14-0126-JCC

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DENYING PLAINTIFF’S MOTION
TO AMEND MINUTE ORDER

This matter comes before the Court on the Report and Recommendation of the Honorable Brian A. Tsuchida, United States Magistrate Judge. (Dkt. No. 18.) Having thoroughly considered the Report and Recommendation, Plaintiff’s motions, and the relevant record, the Court finds oral argument unnecessary and hereby ADOPTS the Report and Recommendation (Dkt. No. 18) and REVOKES Plaintiff’s *in forma pauperis* status for the reasons explained below. Additionally, Plaintiff’s Motion to Amend Court Minute Order (Dkt. No. 19) is DENIED.

I. BACKGROUND

In 2014, after being granted leave to proceed *in forma pauperis*, James H. Maxwell (Plaintiff) filed a pro se complaint against his private employer, Real Change (Defendant), alleging that the disciplinary actions Real Change undertook against him violated his rights under 28 U.S.C. § 1983. (Dkt. Nos. 4; 5.) On January 6, 2015, the Court dismissed the action on the grounds that section 1983 claims are not actionable against a private party. (Dkt. No. 9; 10.)

1 Plaintiff filed a notice of appeal. (Dkt. No. 14.) On March 2, 2015, the Ninth Circuit requested
 2 that this Court determine whether Plaintiff's *in forma pauperis* status should continue for this
 3 appeal or whether the appeal is frivolous or taken in bad faith. (Dkt. No. 16.) Through a minute
 4 order, this Court referred the matter to Judge Tsuchida. (Dkt. No. 17.) On March 4, 2015, Judge
 5 Tsuchida recommended that Plaintiff's *in forma pauperis* status be revoked because his claim
 6 against Real Change is not actionable under section 1983. (Dkt. No. 18.) On March 12, 2015,
 7 Plaintiff filed a Motion to Amend Court Minute Order (Dkt. No. 17) that referred the matter to
 8 the Judge Tsuchida. (Dkt. No. 19.)

9 **A. In Forma Pauperis Status**

10 Judge Tsuchida determined that Plaintiff's *in forma pauperis* status be revoked because
 11 any appeal of this matter would be frivolous. (Dkt. No. 18.) 28 U.S.C. § 1915(a)(3) provides that
 12 "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not
 13 taken in good faith." The Ninth Circuit has interpreted the phrase "taken in good faith" to mean
 14 frivolous. *See Forney v. Hitner*, 2014 WL 171948, at *2 (W.D. Wash. 2014) (*citing Hooker v.*
 15 *American Airlines*, 302 F.3d 1092 (9th Cir. 2002)). A complaint is frivolous if "it lacks an
 16 arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

17 Plaintiff's claim is not cognizable under section 1983. Defendant is a private party that
 18 publishes a newspaper. A private party, such as Defendant, is generally not considered a state
 19 actor who may be held liable under section 1983. *See Price v. Hawaii*, 939 F.2d 702, 707–08
 20 (9th Cir. 1991). Plaintiff has not presented evidence to suggest that Defendant was acting under
 21 the color of state law or in any way conspired with a state actor to deprive Plaintiff of a
 22 constitutional right. (Dkt. No. 1.1.) Accordingly, Plaintiff's claim against Defendant is not
 23 actionable under section 1983 and his claim against Defendant is frivolous. Plaintiff's *in forma*
 24 *pauperis* status should be revoked.

25 **B. Plaintiff's Motion to Amend Court Minute Order**

26 Plaintiff's Motion to Amend Court Minute Order (Dkt. No. 19) is **DENIED**. Pursuant to
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28 U.S.C. § 636(b)(1)(A), “a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court.” The statutory exceptions to this rule do not apply to Plaintiff’s case. *See* 28 U.S.C. § 636(b)(1)(A). Plaintiff was provided with an opportunity to respond to Judge Tsuchida’s Report and Recommendation, and was given a two week window in which to do so. (Dkt. No. 18.) Plaintiff’s motion (Dkt. No. 19) was filed within this window, but did not create any reason to decline to adopt the Report and Recommendation. Thus, Plaintiff’s motion (Dkt. No. 19) is denied.

II. CONCLUSION

Accordingly, the Court, having considered the Report and Recommendation of the Honorable Brian A. Tsuchida and the balance of the record, hereby **ORDERS** as follows:

- (1) The Court ADOPTS the Report and Recommendation (Dkt. No. 18);
- (2) Plaintiff’s *in forma pauperis* status is REVOKED because any appeal of this matter would be frivolous;
- (3) The Court DENIES Plaintiff’s Motion to Amend Court Minute Order (Dkt. No. 19);
- (4) The clerk is respectfully DIRECTED to send copies of this Order to Plaintiff and Judge Tsuchida.

DATED this 23rd day of April, 2015.



John C. Coughenour
UNITED STATES DISTRICT JUDGE